

STATE OF MICHIGAN
COURT OF APPEALS

KATHLEEN VANATTA,

Plaintiff-Appellant,

v

ESTATE OF JOHN J. JINKNER, Deceased,

Defendant-Appellee.

UNPUBLISHED

November 15, 2002

No. 231374

Oakland Circuit Court

LC No. 99-014341-NI

Before: O’Connell, P.J., and Griffin and Hoekstra, JJ.

PER CURIAM.

Plaintiff appeals as of right from a judgment of no cause of action entered in favor of defendant following a jury trial. We affirm.

In July of 1996, a vehicle driven by defendant’s decedent¹ rear-ended plaintiff’s truck while plaintiff was stopped at a red light. Neither vehicle was seriously damaged, and the two parties exchanged insurance information and drove away. The following day, plaintiff experienced pain, weakness, and tingling in her neck, right arm and hand that she attributed to the accident. In response to this problem, plaintiff saw her family doctor two days later. An x-ray of plaintiff’s cervical spine showed no abnormalities and plaintiff was treated with anti-inflammatory drugs. Plaintiff’s condition persisted, and after physical therapy did not help, she was referred to a neurologist and a neurosurgeon. Eventually, plaintiff was diagnosed with a brachial plexus “stretch” injury.

Plaintiff instituted this suit against defendant, claiming that as a result of the decedent’s negligence, she sustained “serious, permanent and disfiguring injuries” constituting severe impairment of bodily function and severe disfigurement. At trial, the jury found that plaintiff was not injured in the automobile accident and returned a verdict of no cause of action. The trial court denied plaintiff’s motion for new trial and judgment notwithstanding the verdict. This appeal ensued.

Plaintiff’s first two claims of error are that the trial court erred in requiring her to call an expert witness to testify in person at trial rather than by deposition and in admitting photographs of the vehicles involved in the accident. Plaintiff does not support either claim with citation to

¹ Decedent died from an unrelated illness.

relevant authority and, consequently, has abandoned both arguments. *Prince v MacDonald*, 237 Mich App 186, 197; 602 NW2d 834 (1999) (“[W]here a party fails to cite any supporting legal authority for its position, the issue is deemed abandoned.”); *Head v Phillips Camper Sales & Rental, Inc*, 234 Mich App 94, 116; 593 NW2d 595 (1999) (“This Court will not search for authority to sustain or reject a party's position.”). Even if considered on their merits, both arguments are patently meritless.

With respect to plaintiff's first claim, that the trial court erred in excluding plaintiff's expert medical witness' de bene esse deposition and requiring the witness to testify in person at trial, we disagree. Admission of depositions at trial is generally left to the trial court's discretion. *Lombardo v Lombardo*, 202 Mich App 151, 154-156; 507 NW2d 788 (1993); *Bonelli v Volkswagen of America, Inc*, 166 Mich App 483, 502; 421 NW2d 213 (1988), and a trial court's decision concerning the admission of evidence will not be disturbed absent an abuse of discretion, *Chmielewski v Xermac, Inc*, 457 Mich 593, 614; 580 NW2d 817 (1998). An abuse of discretion is found when an unprejudiced person, considering the facts on which the court acted, would say there is no justification for the ruling made. *Lombardo, supra* at 154.

At the deposition of plaintiff's expert, a medical doctor, plaintiff's counsel advised the doctor not to answer questions that defendant's counsel posed concerning the witness's opinions of plaintiff's medical condition given in the course of an unrelated prior malpractice claim. Defendant's counsel relied on an order that the trial court entered on plaintiff's motion in limine before the taking of the deposition that directed that “no mention of prior lawsuits filed or legal history shall be referred to at the time of trial.” At the time of trial, the trial court disagreed with plaintiff's counsel's interpretation of the order and found that the order precluded mention of other litigation, not the exploration of legitimate areas of inquiry concerning the witness's medical opinion of plaintiff's other medical conditions that were the subject of prior litigation. The trial court further determined that the appropriate remedy was to deny use of the deposition and to require plaintiff to present the witness at trial or in some other way supplement the deposition. Subsequently, the witness testified at trial.

In her brief, plaintiff argues that the trial court misapplied its own order and maintains that the questions related to prior litigation and were properly not answered by the witness. To the contrary, we fail to discern any misapplication of the order and plaintiff's argument is not persuasive. The trial court concluded that plaintiff's counsel mistakenly and over-broadly interpreted its order and then applied an appropriate remedy. We find no abuse of discretion in the trial court's refusal to admit the deposition testimony.

Further, to the extent that plaintiff asserts that she was prejudiced, we find her claim unconvincing. Without any explanation or citation to authority, plaintiff asserts that

the trial court committed reversible error in precluding the video taped de bene esse deposition of [the doctor] which was clearly more beneficial to [p]laintiff's position, as opposed to requiring [the doctor] to appear live at trial.

Plaintiff's lack of support for this assertion is with good reason. We, too, can find no basis for finding that harm resulted from the fact that the witness testified in person at a trial rather than by deposition. Plaintiff's claim of prejudice is also without merit.

With respect to plaintiff's second claim, that the trial court erred in admitting into evidence photographs of plaintiff's truck because they had no relevance in determining the nature and extent of plaintiff's injuries suffered in the accident and because their admission could only result in confusing the jury, we disagree. The admission of photographs as evidence is within the discretion of the trial court. *Detroit v Hospital Drug Co*, 176 Mich App 634, 648; 440 NW2d 622 (1988); *McMiddleton v Otis Elevator Co*, 139 Mich App 418, 427; 362 NW2d 812, mod 424 Mich 862 (1985). To be admissible, photographs must be accurate, have probative value, and must be helpful in throwing light upon some material point in issue. *McMiddleton*, *supra* at 423.

At trial, defendant admitted fault for the accident, a minor rear-end collision. Causation and the extent of plaintiff's injuries, if any, were the only contested issues. Under the circumstances, we believe that photographs that depict the damage to plaintiff's truck were relevant because a reasonable relationship exists between the severity of a car crash and the nature and extent of injury to the occupants. Further, we are not persuaded that the photographs should have been excluded because they might confuse the jury. Plaintiff argues that they misled the jury into believing that no damage meant that plaintiff could not have been injured. These photographs conflicted with plaintiff's theory of the case, and thus raised issues that the jury had to resolve. The fact that evidence is conflicting is not a basis for exclusion. Because the photographs were relevant to issues in dispute, they were properly admitted into evidence. We find no abuse of discretion.

Finally, plaintiff argues that the jury's verdict of no cause of action, after finding that plaintiff sustained no injury in the automobile accident, is against the great weight of the evidence. We disagree. With regard to motions for a new trial, this Court has explained:

In deciding a motion for a new trial, the trial court's function is to determine whether the overwhelming weight of the evidence favors the losing party. This Court must determine whether the trial court abused its discretion in ruling with regard to a motion for a new trial. Substantial deference is given to the trial court's conclusion that the verdict was not against the great weight of the evidence. [*Morinelli v Provident Life & Accident Ins Co*, 242 Mich App 255, 261; 617 NW2d 777 (2000) (citations omitted).]

Here, in support of her argument that overwhelming evidence favored a finding that plaintiff was in fact injured, plaintiff relies on her own testimony that she experienced pain the day after the incident and thereafter, along with expert medical testimony regarding her condition, including identification of a brachial plexus injury. However, defendant presented conflicting evidence regarding the relatively minor nature of the collision and medical testimony that undermined plaintiff's evidence, including plaintiff's expert's admission that a brachial plexus injury is unlikely to result from a very minor accident. Given the conflicting evidence, we find that the jury's verdict is not against the great weight of the evidence.²

² To the extent that plaintiff suggests that the trial court erred in denying judgment notwithstanding the verdict, we disagree because, when viewing the testimony and all legitimate inferences that may be drawn from the testimony in a light most favorable to defendant, (continued...)

Affirmed.

/s/ Peter D. O'Connell
/s/ Richard Allen Griffin
/s/ Joel P. Hoekstra

(...continued)

reasonable jurors could have honestly reached different conclusions concerning whether plaintiff sustained an injury in the accident. *Morinelli, supra* at 260-261.